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No. 87-1449

In the Supreme Court of the United States

OCTOBER TERM, 1987

ETHEL B. MILLER, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

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Petitioner contends that her payments to the Church of Scientology for auditing or training sessions are deductible from taxable income as "contribution[s] or gift[s]" under Section 170 of the Internal Revenue Code.[1]

1. Petitioner paid $3,638 to a branch of the Church of Scientology in 1982 and claimed that payment as a charitable deduction on her federal income tax return under Section 170 of the Code, which permits a deduction for a "contribution or gift" to certain eligible donees (see I.R.C. § 170(c)). On audit, the Commissioner disallowed that deduction and determined a tax deficiency of $256. Pet. App. 1a. Petitioner filed a petition in the Tax Court for review of the Commissioner's determination. There was no trial in the Tax Court, however, nor any other evidentiary submission. Instead, the parties entered into a

[1] Unless otherwise noted, all statutory references are to the Internal Revenue Code (26 U.S.C.), as amended (the Code or I.R.C.).

stipulation to be bound by "any relevant findings of fact and conclusions of law" (excluding those relating to "subjective intent") to be made by the Tax Court in three consolidated "test cases" that were to be tried. The stipulation further provided that the record in the test cases, "to the extent relevant," would be deemed part of the record in this case for the purpose of appeal. See *id.* at 2a, 30a-31a.[2] After the Tax Court decided the "test cases" in favor of the Commissioner (*Graham* v. *Commissioner,* 83 T.C. 575 (1984), aff'd, 822 F.2d 844 (9th Cir. 1987), petition for cert. pending, No. 87-1616 (reprinted at Pet. App. 32a-42a)), the court entered a decision and order in the instant case, finding a deficiency of $256 (Pet. App. 29a).

2. In the *Graham* case, the Tax Court entered findings of fact pertaining to the general operation of the Church of Scientology. Like petitioner, each taxpayer in *Graham* had made payments to a branch of the Church of Scientology[3] and had sought to deduct them on his or her income tax return as charitable contributions (Pet. App. 36a-37a). These payments were made in exchange for "auditing" and "training" services provided by the Church. Scientologists believe that auditing helps an individual to achieve a higher level of "spiritual competence." Auditing is administered in a one-to-one session by a trained Scientologist who asks the auditee questions and measures his skin responses during the answers by means of an electronic device. "Training" courses study the doctrines of

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[2] The government entered into the same stipulation with numerous other taxpayers who had filed petitions in the Tax Court challenging the denial of a charitable deduction for payments to the Church of Scientology.

[3] The Church of Scientology consists both of a central branch, the "mother" Church of Scientology of California, and of numerous branches that are separate entities for tax purposes.

Scientology and are believed to yield further spiritual benefits. See *id.* at 34a.

The Church charges a "fixed donation" for training and auditing, which is almost never waived.[4] The Church "operates in a commercial manner" in providing these services (Pet. App. 36a). It promotes its services through lectures and radio and newspaper advertising. It gives a standard discount for payments made well in advance of the services to be rendered, and it issues refunds of those payments if the services ultimately are not received. *Id.* at 35a-36a.

After making those factual findings, the Tax Court in *Graham* ruled that the payments in question were not contributions, but rather were non-deductible payments made to purchase services (Pet. App. 37a-39a). The court explained that the payments "were not voluntary transfers without consideration, but were made with the expectation of receiving a commensurate benefit in return" (*id.* at 39a). The court continued (*ibid.*): "[W]here contributions are made with the expectation of receiving a benefit, and such benefit is received, the transfer is not a charitable contribution, but rather a quid pro quo." The court also rejected the contention that the denial of the deduction violated the First Amendment (*id.* at 39a-42a).

3. In the present case, the court of appeals affirmed the Tax Court's decision in the Commissioner's favor that had been entered on the basis of *Graham* (Pet. App. 1a-14a). The court held that the payments did not qualify as contributions under Section 170 (Pet. App. 3a-11a), finding that they were "not made with 'detached and disin-

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[4] Indeed, the Church's official policy letter states that "[p]rice cuts are forbidden under any guise" and "PROCESSING MAY NEVER BE GIVEN AWAY BY AN ORG." (Pet. App. 35a n.6). Free services are awarded only to fully contracted staff, on the condition that the staff member fulfill the terms of his contract (*ibid.*).

terested generosity,' but rather in the expectation that she would receive a valuable service from the Church in return" (*id.* at 6a). The court also rejected petitioner's contention that denial of a charitable deduction for her payments to the Church violated the First Amendment (*id.* at 11a-14a).

4. The questions presented in this case are identical to those presented in *Hernandez* v. *Commissioner*, cert. granted, No. 87-963 (Apr. 18, 1988), which is another of the cases that was decided in the Tax Court on the basis of a stipulation to adopt the findings of fact in the *Graham* case (see note 2, *supra*). Accordingly, it would be appropriate for the Court to hold this case pending the disposition of *Hernandez*.

It is therefore respectfully submitted that the petition for a writ of certiorari should be disposed of as appropriate in light of this Court's decision in *Hernandez* v. *Commissioner*, No. 87-963.

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